

assistance. *In re Joshua S.* (2003) 106 CA4th 1341, 1350, 1357, 131 CR2d 656 (children were placed in long-term foster care with a grandmother).

A court is justified in terminating jurisdiction, however, over a child who is over 18 years old and who has given every indication that he or she rejects the assistance of the dependency system even if there is evidence that he or she still needs the services of the system *In re Holly H.* (2002) 104 CA4th 1324, 1337, 128 CR2d 917.

H. [§103.62] Scheduling of Further Hearings; Review by Writ

Unless dependency jurisdiction is ordered terminated at a review hearing, the court should schedule further hearings (*e.g.*, future review hearings or .26 hearings) before adjourning the review hearing. *Welf & I C §§366(a)(1), 366.3(a)* (review hearings must be held every six months). At the review hearing, the court must advise the parties present of the date of any future hearing and of their right to be present and represented by counsel at the hearing. *Welf & I C §366.21(a)*.

There is no direct appeal from an order setting a .26 hearing. See *Welf & I C §366.26(l)*. An order setting a .26 hearing may be reviewed on appeal only if a petition for an extraordinary writ is filed under the requirements of *Cal Rules of Ct 39.1B* and *all* the following conditions are met (*Welf & I C §366.26(l)(1)*; *Cal Rules of Ct 1436.5*):

- The writ petition was filed in a timely manner,
- The writ petition substantively addressed the issues to be challenged on appeal, and
- The appellate court summarily denied the petition or otherwise failed to decide the case on the merits.

If, between the setting of the .26 hearing and the commencement of the hearing itself, a party files a petition under *Welf & I C §388*, showing a change of circumstances which, if proved, would cause a reconsideration of the findings and orders setting the .26 hearing, the court must set the 388 petition for hearing before the commencement of the .26 hearing. See *In re Marilyn H.* (1993) 5 C4th 295, 309, 19 CR2d 244; *Cal Rules of Ct 1432*. See also discussion in §103.54.

IV. SAMPLE FORMS

A. [§103.63] Script: Conduct of Review Hearing

[If parents and the child are represented by counsel and all required conflict of interest statements are on file, go to (4).]

- (1) Appointment of attorney for parents or guardians

You have a right to be represented by an attorney during this review hearing and all other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

[Or]

The court has reviewed the financial declaration of *[name of parent or guardian]* and finds that *[he/she]* is entitled to appointment of counsel. At this time, the court appoints *[name of attorney]* to represent *[him/her]*.

☛ JUDICIAL TIP: When the attorney is on the staff of a governmental agency, it is the *office*, not the individual attorney, who is being appointed.

[If parents waive counsel]

This is a serious matter. The court might determine that eventually your parental rights may be terminated. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

[When applicable, add]

The court now finds that the parents have knowingly and intelligently waived their right to counsel at this hearing.

[If child is represented by counsel and there is no motion for separate counsel, go to (3).]

(2) Attorney for child

The court has read and considered the documentary material submitted by the DSS that is relevant to the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on the issue of why the court should not appoint counsel for the child?

[After hearing evidence, if any, on issue of child's need for attorney]

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints *[name of attorney]* as the child's CAPTA guardian-ad-litem to represent the child.

[Or]

The court finds, based on the facts of this case, that *[the child understands the nature of the proceedings; the child is able to communicate and advocate effectively on behalf of him or herself before the court, other counsel, other parties, including social workers, and other professionals involved in the case; and under the circumstances of the*

case, the child would not gain any benefit by being represented by counsel because [state reasons for each finding]/there is a need to appoint counsel for the child at this time].

The court *[does not appoint counsel at this time/appoints [name of attorney]]* to represent the child.

(3) Explanation of procedure/notification of consequences

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings. You have already participated in a detention hearing, a jurisdiction hearing, and a disposition hearing *[as well as [six-/12-/18-] month review hearings]*. At the previous hearing, the court ordered that *[state orders]*. At this hearing the court will determine whether *[the out-of-home placement will continue/jurisdiction should be terminated/reunification services should be maintained, increased, or terminated, etc.]*.

Note: Often, the attorney for the parent or guardian will state that he or she has explained these matters to the parents and will go on to explain the parents' or guardians' position. Many judges encourage attorneys who appear in their courts to take this responsibility.

(4) Waiver of advisement of rights

[To each participant]

Did your attorney explain your rights to you?

Do you waive advisement of rights?

[If the answer to both is yes, go to (10).]

(5) Advisement of rights

You have certain rights at this hearing. These are (1) the right to see and hear all witnesses who may be examined by the court at this hearing, (2) the right to cross-examine, which means ask questions of, any witness who may testify at this hearing, (3) the right to present to the court any witnesses or other relevant evidence, (4) the right to subpoena witnesses, and (5) the right to a hearing on the issues raised in the review report. You have the right to assert the privilege against self-incrimination *[but anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding]*.

Note: See discussion in §103.25.

(6) Advisement re addresses under [Welf & I C §316.1](#)

The address that *[is in the petition/you gave the court [at previous hearings/today]]* will be used by the court and the social worker for all

further notices unless you advise the court and the social worker of any changes in address.

Note: The court should ensure that Judicial Council Form JV-140, Notification of Mailing Address, is made available

(7) Evidence

[Court reads any written reports and states for the record all material read by the court]

The court has read and considered and now receives into evidence the report dated _____, prepared by [name], consisting of _____ pages, and containing the following attachments: *[list attachments]*.

Note: The term for the social worker’s supplemental report (see [Welf & I C §366.1](#)) varies from county to county. Whatever the local usage, the court must indicate which documents it is relying on.

The court has also read and considered the report of [name].

Note: The court may read and consider the report of any court-appointed special advocate. See [§103.26](#).

[To parent, guardian, child, or other interested person]

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides *[whether to continue the child’s present living situation or change it in some way/what services to offer or augment, etc.]*. If the court makes findings solely on the basis of the evidence in the social worker’s report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

[To parent, guardian, and the attorneys]

May the court base its findings solely on the social worker’s report and other documents that it has received?

Note: If the answer is no, the court should orally examine or permit testimony of the child, if present, and the parents or other persons with relevant knowledge bearing on relevant issues. The court must allow cross-examination of any witness who may testify.

Now is the time for you to present any evidence or make any statement before the court decides on continuing or changing the child’s placement and the nature and extent of the reunification services.

[To persons seeking fifth amendment protection from testifying (see California Judges Benchguide 102: Juvenile Dependency Disposition Hearing §102.19 (Cal CJER))]

I am going to grant the *[joint]* request of the DSS *[and the district attorney]* for immunity and will order you to testify despite your claim of self-incrimination. However, anything you say here may not be used against you in any criminal court or juvenile court proceeding arising out of the same conduct we are discussing here today.

Note: If there is no joint request, the judge must hear argument on why immunity should not be granted. [Cal Rules of Ct 1421\(d\)](#).

(8) Introduction of court process to child witness

Hello. I am Judge _____. I am in charge of this courtroom. My job is to make sure that everything is fair and that everyone else here does his or her job correctly. This is Bailiff Y. *[He/She]* is here to make sure that no one gets hurt. *[Mr./Ms.]* Z is the court reporter. *[He/She]* will write down everything that people say so that if anyone later forgets what was said, we can look it up.

It is important to speak loudly and clearly so that *[Mr./Ms.]* Z can hear you.

Mr. L and Ms. M are the lawyers. They will be asking you some questions. Their job is to help you tell what you saw and heard so that we can find out the truth.

It is very important to tell the truth, because if I do not understand the whole truth, I may not be able to make the plan that is the best for everyone.

You will be answering questions this *[morning/afternoon]*. We will stop often so that everyone may have a rest. If you have any problems before the next break, let the *[support person/attorney/judge]* know.

Also, you may not understand all the questions. Adults are used to talking to other adults and not to children. When you don't understand a question, raise your hand and let me know that you don't understand. If you don't know the answer to a question, just say, "I don't know," or "I don't remember."

Note: Some judges may not want to tell the child that their job is to be fair for fear that the child will not find the result fair and be more traumatized than reassured. Whatever explanation, if any, is given to the child must be appropriate to the child's age, experience, and stage of development.

(9) Final question

Do you have any questions about the court's orders or what is going to take place in the future?

B. [§103.64] Script: Findings and Orders—In General

(1) Introduction

The court has read and considered [*name the documents, e.g., the social worker's report dated _____, and attached documents or whatever the local nomenclature is*].

[*If applicable*]

The court has also considered the testimony of the witnesses and their demeanor on the stand as well as the arguments of counsel.

(2) Parties

[*As to each man who claims to be (or is alleged by others to be) the father, the court may make a finding as to whether he is a biological or presumed father (or not a father at all) after holding a hearing on the issue.*]

The court finds that the legal status of [*name*] is [*status of father, e.g., presumed father*].

[*If de facto parent status is sought*]

The court finds by a preponderance of the evidence that [*name*] should be accorded the status of de facto parent because of the following: [*state reasons*].

[*Or*]

The court does not find by a preponderance of the evidence that [*name*] should be accorded the status of de facto parent. The facts underlying this finding are: [*state facts*].

[*Optional*]

Therefore, [*name*] may not participate in future hearings.

(3) When child has not been removed

The court finds that the following conditions that justified assumption of jurisdiction under section 300 no longer exist: [*state conditions*]. Moreover, withdrawal of supervision would not cause those conditions to rearise. Therefore, jurisdiction is terminated.